

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )

Plaintiff, )

v. )

No. 4:08CR271 RWS

HOSEA SWOPES, )

Defendant. )

**ORDER**

This matter is before the Court on the Defendant's Objections to the Memorandum and Recommendation of the United States Magistrate Judge. I have conducted a *de novo* review of the briefs filed by the parties, the evidentiary hearings, and the relevant case law. The defendant's objections to Judge Fleissig's Report and Recommendation will be denied.

**Background**

Defendant Hosea Swopes' Motion to Suppress Evidence and Statements was referred to United States Magistrate Judge Audrey G. Fleissig pursuant to 28 U.S.C. § 636(b). Judge Fleissig conducted an evidentiary hearing on July 15, 2008 and a supplemental evidentiary hearing on July 25, 2008.

On August 18, 2008 Judge Fleissig filed her Report and Recommendation that the defendant's motion to suppress be denied. Swopes filed his objection to the Report and Recommendation on August 21, 2008.

### **Analysis**

Based on my *de novo* review of the briefs and the evidentiary hearings, I find that the police officers had a reasonable suspicion to stop Mr. Swopes for questioning because he matched the description given by the victim, he was wearing a distinctive shirt identified by the victim and he was in the general area of the suspected robbery.

Mr. Swopes subsequent arrest was lawful because the officers had probable cause to make the arrest. As a result the seizure of evidence at the time of his arrest was proper.

Mr. Swopes also challenges his identification by the victim as unduly suggestive. I find that the identification was not unduly suggestive. Even if the procedures were unduly suggestive, the identification would not be subject to suppression because it was sufficiently reliable under the facts presented here. See Neil v. Biggers, 409 U.S. 188, 198 (1972) and Manson v. Braithwaite, 432 U.S. 98, 116 (1977).

Finally because Mr. Swopes' arrest in October 2007 was lawful and proper there is no basis to suppress evidence seized from defendant at the time of his subsequent arrest on May 20, 2008 on this indictment. Statements made at the time of his May 2008 arrest will not be suppressed.

As a result, based on my *de novo* review,

**IT IS HEREBY ORDERED** that United States Magistrate Judge Audrey Fleissig's Report and Recommendation [#36] is **SUSTAINED, ADOPTED, and INCORPORATED** herein.

**IT IS FURTHER ORDERED** that defendant Swopes' Objections to the Report and Recommendation are denied and his motion to suppress evidence and statements [#22] is denied.

  
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RODNEY W. SIPPEL  
UNITED STATES DISTRICT JUDGE

Dated this 17th day of October, 2008.